

MONDAY, JULY 18, 2005

RULE ADOPTION

COMMUNITY AFFAIRS

DIVISION OF FIRE SAFETY

UNIFORM FIRE CODE; FIRE CODE ENFORCEMENT; HIGH LEVEL ALARMS; FIRE SERVICE TRAINING AND CERTIFICATION; CERTIFICATION OF FIRE PROTECTION EQUIPMENT CONTRACTORS; FIRE SERVICE INCIDENT MANAGEMENT SYSTEM; RESIDENTIAL DISABILITY IDENTIFICATION EMBLEMS

Readoptions: N.J.A.C. 5:70, 5:71, 5:72, 5:73, 5:74, 5:75 and 5:76

Proposed: August 16, 2004 at 36 N.J.R. 3652(a).

Adopted: May 26, 2005 by Susan Bass Levin, Commissioner, Department of Community Affairs.

Filed: June 14, 2005 as R.2005 d.225, without change.

Authority: N.J.S.A. 52:27D-198, 219, 25d, 25k, 25gg and 24hh, and 52:27B-139.12.

Effective Date: June 14, 2005.

Expiration Date: June 14, 2010.

Summary of Public Comments and Agency Responses:

Comments were received from Maryann Carroll, Director of Government and Public Affairs of the New Jersey State Funeral Directors Association, Inc.

COMMENT: Funeral homes, funeral parlors and mortuaries should not be classified as life hazard uses and, therefore, subject to periodic inspections and fees. This classification is arbitrary and bears no rational relationship to the goals and purposes of the Uniform Fire Safety Act.

RESPONSE: The New Jersey State Funeral Directors, Inc. previously made this argument in a petition for a rule that was acknowledged by the Department in a public notice published on March 15, 2004 at 36 N.J.R. 1611(a) and answered in a public notice published on May 5, 2004 at 36 N.J.R. 2261(a). The Department's response was, and is, as follows: N.J.S.A. 52:27D-

196 defines "life hazard use," in relevant part, as "a building or structure or part thereof, classified in any of the following use groups in the 1981 edition of the Building Officials and Code Administrators, International (BOCA) Basic Building Code: A-1, A-2, A-3, A-5 and . . . any other use which the commissioner defines by regulation as a life hazard." Funeral homes accommodating at least 50 people were originally included in the A-3 use group as buildings designed for an assembly use similar to that of a lecture hall, which is one of the uses specifically listed under A-3 in the 1981 BOCA Basic Building Code, which listing also includes "buildings designed for similar assembly purposes." The classification of funeral homes in use group A-3 was subsequently affirmed by their express inclusion in that use group in the 2000 edition of the International Building Code, the successor to the BOCA Basic Building Code, which is now the building subcode of the State Uniform Construction Code.

In further response to the comment, the Department notes that a change of the sort requested by the commenter is such that it cannot be made without public notice and an opportunity for public comment and, therefore, cannot be made on adoption.

COMMENT: Inspection fees for funeral homes are burdensome and do not bear a reasonable relationship to the cost of inspection. Funeral homes do not pose

the same inspection challenges as do other uses that are in the same fee categories.

RESPONSE: The Department will reexamine the classification of funeral homes of different occupancy limits. However, as previously stated, any revision would require a rule change that could only be done after public notice and opportunity to comment, and could not be done on adoption.

Federal Standards Statement

The readopted rules are consistent with the standards imposed as a result of the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., and the Public Employees Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 5:70, 5:71, 5:72, 5:73, 5:74, 5:75 and 5:76.